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6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
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9 IN RE: LITHIUM ION BATTERIES  
10 ANTITRUST LITIGATION  
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12 This Order relates to the  
13 Indirect Purchaser Actions  
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Case No. 4:13-md-02420-YGR (DMR)

**ORDER DENYING MOTION FOR  
CLARIFICATION RE: UNREDACTED BID**

Dkt. No. 2533

15 On September 16, 2019, objector Gordon Morgan filed his Motion for Clarification, to  
16 Locate Unredacted Bid, and to Order Submission of Unredacted Bid for Purposes of a Complete  
17 Appellate Record. (Dkt. No. 2533.) Objector Michael Bednarz joined in that motion on  
18 September 17, 2019. (Dkt. No. 2535.) For the reasons stated herein, the motion is **DENIED**.

19 In his motion, Morgan requests the court unseal a document submitted by the law firm of  
20 Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) in connection with its request to be  
21 appointed lead counsel in this action, the redacted version of which appears at Docket No. 108-1.

22 First, Morgan’s motion is both procedurally defective and substantively inadequate as a  
23 basis for reconsidering the Court’s prior Order denying his request to unseal the bid. The motion  
24 is procedurally improper for its failure to comply with Civil Local Rule 7-9. The motion  
25 essentially seeks reconsideration of this Court’s August 16, 2019 Order Granting Indirect  
26 Purchaser Plaintiffs’ (IPPs) Motion for Final Approval of Settlements with SDI, Tokin, Toshiba  
27 and Panasonic Defendants and Granting Motion for Attorneys’ Fees, Expenses and Service  
28 Awards (Dkt. No. 2516), in which the request to unseal the bid was denied (*id.* at 5), without first

1 seeking leave to do so.

2       Moreover, Morgan offers no material change in the law or facts that would support  
3 reconsideration. As the Court stated in its Order Granting Indirect Purchaser Plaintiffs' (IPPs)  
4 Motion for Final Approval of Settlements with SDI, Tokin, Toshiba and Panasonic Defendants and  
5 Granting Motion for Attorneys' Fees, Expenses and Service Awards, one firm's rejected bid to be  
6 lead counsel is irrelevant to the Court's determination of the reasonableness of the attorneys' fees  
7 sought here. (Dkt. No. 2516 at 5.) Morgan has offered no argument or authority that would  
8 support public filing of the redacted portion of the declaration, much less one that he could not  
9 have presented previously in connection with his objection to final approval.

10       Even if Morgan could offer a persuasive reason to require the Court to unseal or otherwise  
11 provide the redacted portion of the document to him, or include the document the Court could not  
12 do so. Some explication of the chronology of the proceedings is necessary to explain why.

13       On March 28, 2013, plaintiffs in the *Young, Hanlon, Cohen, and Powers* Indirect Purchaser  
14 actions filed an application requesting Hagens Berman be appointed interim class counsel. (Dkt.  
15 No. 108.) In support of that motion, counsel Steve W. Berman filed a declaration (Dkt. No. 108-1)  
16 in which portions of paragraph 17 were redacted. On that same date, plaintiffs Bradley Seldin,  
17 Bruce Sterman, and Kevin Young filed an administrative motion to seal portions of the Declaration  
18 of Steve W. Berman (Dkt. No. 107, "Motion to Seal".) That administrative motion included: (1) a  
19 motion stating Steve W. Berman had submitted a declaration that included an attorneys' fees and  
20 expense grid which Hagens Berman proposed to the Court in support of its application, and  
21 arguing why that information should be sealed; (2) a Declaration of Steve W. Berman in Support  
22 of the Administrative Motion to Seal (Dkt. No. 107-1) stating that the confidential information in  
23 his other declaration should be sealed as privileged attorney work-product; and (3) a proposed  
24 form of order on the Motion to Seal (Dkt. No. 107-2). The ECF docket does not indicate that a  
25 version of the Berman Declaration without redaction of the portions of paragraph 17 was ever filed  
26 in the ECF system.

27       On April 3, 2013, after a lengthy and thorough hearing with counsel from across the United  
28 States on, the Court stated its decision on the record. (*See generally* Dkt. No. 145 [minutes of

1 April 3, 2013]; Dkt. No. 148 [Transcript of April 3, 2013 Proceedings].) On May 24, 2013, the  
2 Court issued its written decision regarding appointment of interim class counsel, in which it  
3 rejected Hagens Berman’s proposal in favor of appointing three firms as interim *co*-lead counsel.  
4 (Dkt. No. 202 [May 24, 2013 Modified Pretrial Order No. 1].)

5 Subsequent to the issuance of May 23, 2013 Modified Pretrial Order No. 1, the Court  
6 granted the pending Motion to Seal and ordered that “portions of the Berman Declaration be filed  
7 under seal.” (Dkt. No. 216.) Again, the Court’s review of the electronic docket does not indicate  
8 that any such unredacted version was docketed under seal subsequent to the order granting the  
9 Motion to Seal.<sup>1</sup> Thus, to the extent the order granting the Motion to Seal implies that the  
10 unredacted version was ever docketed, or that it was otherwise in the possession of the Court at the  
11 time the order granting the sealing was entered, that is an apparent clerical error.

12 To the best of the undersigned’s recollection, Hagens Berman submitted the unredacted  
13 version of the declaration to the Court for review *in camera* prior to the April 3, 2013 hearing and  
14 the Court returned the *in camera* submission to Hagens Berman, through the courtroom deputy, at  
15 the hearing. However, the record does not so reflect.<sup>2</sup>

16 Out of an abundance of caution, given the lack of a definitive statement in the record, the  
17 Court has conducted a thorough search of its own notes and chambers copies of submissions. The  
18 Court has not located any copy of the *in camera* submission from Hagens Berman, electronically  
19 docketed or otherwise.

20 Finally, the Court finds no merit in Morgan’s request that it order Hagens Berman to  
21 include the redacted portion in the record on appeal. The Court has established that it did not  
22 consider the redacted portion in reaching its decision to appoint counsel, nor does that redacted  
23 information have any apparent bearing on the Court’s determination of whether the attorneys’ fees  
24 awarded upon settlement approval were reasonable, given the procedural history of this case and  
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26 <sup>1</sup> The Court notes that the electronic docket in this multi-district litigation currently  
27 numbers 2,558 entries.

28 <sup>2</sup> The only reference to the *in camera* submission is in the transcript of the lead counsel  
hearing (Dkt. No. 148) at 60:17-61:5. [Sandra Cuneo, counsel for plaintiff Kristin Starr Barnes,  
noting that Hagens Berman submitted the request to file their fee and expense structure under seal  
but noting the “Court didn’t ask for it . . . you have not decided to [have] a bidding contest”].

1 the myriad of factors the Court considered in reaching its decision on what amount of fees would  
2 be fair and reasonable upon settlement of the class action. (Dkt. No. 2516 at 12-14.)

3 For the foregoing reasons, the motion is **DENIED**.

4 This terminates Docket No. 2533.

5 **IT IS SO ORDERED.**

6 Dated: November 18, 2019



**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT JUDGE**